That being so, there is no justification for reading into either provision additional words in an effort to give effect to what might have been that intention, such as interpreting the word "owner" as if it meant "owner or, if more than one, any of them". Giving the language of the Malayan provision its literal meaning, therefore, all that can be said is that as, by virtue of the normal rule of interpretation, the singular includes the plural, the word "owner" must, in appropriate circumstances, be taken to mean "owners" and other references to the owner, such as the word "himself", must similarly be read in the plural.

I have not overlooked the fact that there are differences in the language used in the Malayan and English provisions and that some of these differences result in substantial difference in the effect of the two provisions, for example, in the class of persons for whom possession may be sought. However, I cannot find in those differences any feature that suggests that the foregoing reasoning is affected in any manner, or that the conclusion should be any different.

Moreover, the Malayan provision has been in force since 1947, the decision in *McIntyre's* case [1] was delivered in 1948, and the Malayan provision was re-enacted in the same form in 1956, as part of completely new rent control legislation. Moreover, the new Ordinance contained a number of amendments to the 1947 law, including several extensive amendments to section 12(1), one of which was the addition of an important proviso to paragraph (f) itself. So far, therefore, as the relevant part of paragraph (f) is concerned, there is the strongest evidence of an intention on the part of the legislature not to vary whatever the effect of that part of the paragraph was. It can only be assumed that, in undertaking such a comprehensive re-enactment and amendments, and in amending paragraph (f) itself, the advisers to the government were aware of the effect of similar provisions as a result of judicial interpretation.

In these circumstances, it is hardly feasible to hold the view that, in 1956, the legislature could have had an intention to provide for any effect contrary to that resulting from the decision in *McIntyre's* case.[1]

This history of the subject confirms the view that the interpretation adopted in that case is a correct interpretation of the intention of the Malayan legislature.

Putting the evidence at its highest, it only establishes that not more than four of the five owners were to occupy the premises and consequently the respondents did not establish a right to possession under section 12(1)(f). On this ground, this appeal must be allowed with costs to the appellant. The order of the court below must be set aside and the appellant should have an order for his costs in that court also.

Thomson L.P.: I have had the advantage of reading the judgment of Sir Campbell Wylie. I agree this appeal should be allowed with costs.

Barakbah C.J. (Malaya) concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

CHOZI v. CHITRASENAN

[O.C.J. (Ambrose J.) July 18, 1964]

[Singapore — Suit No. 75 of 1963]

Master and Servant — Safe system of work — Work intrinsically dangerous — Negligence of servant — Injury to fellow servant — Vicarious liability of master — Duty to take reasonable care.

Damages — Ankle — Compound fracture of heel-bone — Probability of plaintiff going to India — Reduction of special damages.

The plaintiff aged 57, a labourer, sustained a compound fracture of his right heel-bone as a result of a rail falling on his right foot, while he, in the course of employment by the defendant, was unloading rails from a railway wagon in Johore. In this action he claimed damages for the injury on the ground of the negligence of the defendant or his servants. He alleged that one A, a servant or agent of the defendant, so negligently managed or controlled the unloading of the rails that while A was pushing one end of a rail it fell on the plaintiff's right ankle as the plaintiff came to the edge of the wagon and injured him. He further alleged that the defendant was negligent in failing to provide a safe system of work. The defendant denied the negligence and pleaded that the injury was caused solely or contributed to by the plaintiff's negligence. The learned judge accepted the evidence of plaintiff's witness and found that there was no contributory negligence on the part of the plaintiff, and

Held: (1) there was a duty owed to the plaintiff by A to take reasonable care in the work of managing or controlling the unloading of rails; on the commonsense view of the evidence the rail fell on the plaintiff's right foot as a result of A's negligence and the defendant was vicariously liable for such negligence;

(2) the work involved was intrinsically dangerous and the defendant should have provided and maintained a reasonably safe system of work and the defendant was negligent in failing to do so (the statement of the law contained in para. 976, pp. 508-10 of 25 *Halsbury's* Laws, 3rd Edn. adopted);

(3) the defendant might delegate the performance of his duty as employer to provide a reasonably safe system of work; but he could not delegate or avoid his own responsibility for the proper performance of his personal duty; as his workmen did not properly perform the duty delegated to them, the defendant could not escape liability;

(4) taking into account the possibility that the plaintiff would have gone to India for 6 months during the period of 36 months (from the date of the accident to the date of the trial) $14,500 should be awarded as special damages for loss of earnings for 30 months at

the rate of $150 a month, $5,000 as general damages for pain and suffering and loss of amenities, and $3,600 for loss of future earnings for 2 years.

ACTION for damages.

David Marshall (*G. Murugaiyan* with him) for the plaintiff.

K. E. Hilborne for the defendant.

Cur. Adv. Vult.

Ambrose J.: On the 2nd March, 1961, the plaintiff sustained a compound fracture of his right heel-bone as a result of a rail falling on his right foot, while he, in the course of employment as a labourer by the defendant, was unloading rails from a railway wagon at Tanam in Johore.

In this action the plaintiff claims damages for the injury on the ground of the negligence of the defendant or his servants. In his statement of claim and his further and better particulars he alleges that Abdul Rahman, a servant or agent of the defendant, so negligently managed or controlled the unloading of rails from the railway wagon that while Abdul Rahman was pushing one end of a rail it fell on the plaintiff's right ankle as the plaintiff came to the edge of the railway wagon and injured him. He further alleges that the defendant was negligent in failing to provide a safe system of work.

The defendant in his defence denies the negligence alleged. He pleads that, the plaintiff, while standing on a pile of rails on the railway wagon, attempted to unload the pile by prising it with a crowbar and thereby caused a rail to fall on his leg; and that the falling of the rail on the plaintiff's leg was caused solely or contributed to by the plaintiff's negligence.

The first question to be decided is this: how did the rail happen to fall on the plaintiff's right foot? The evidence given by the plaintiff's witness, Samsudin, which I accept, establishes the following facts. On the day of the accident there were about thirty rails stacked lengthwise on two open railway trucks which were joined together. Each rail was about 28 feet long and weighed about 480 lbs. The trucks were about 6 feet wide and had no sideboards. Underneath the rails were four sleepers, each 5 feet 8 inches long: two of them were placed across each end of the combined trucks, one being alongside the other so that one jutted out a foot beyond one side of the trucks and the other a foot beyond the other side. The system used for unloading the rails on the day in question was this. Abdul Rahman, who was employed by the defendant, stood on the trucks and levered up with a crowbar one end of a rail to the end of a sleeper projecting from the side of the trucks. He then levered up the other end of the rail to the end of the other sleeper projecting from the same side of the trucks. The plaintiff, Samsudin and four other labourers, who were all employed by the defendant, then placed their left shoulders under the rail which was about 4 feet 6 inches above the ground and about a foot away from the side of the trucks; they lifted it with their left shoulders and carried it some distance to the right, from the point of view of an imaginary observer facing the side of the trucks; and they laid it on the railway track which was being extended. Six or seven rails were unloaded from the trucks in this way without any mishap. When the labourers returned to unload another rail, the plaintiff led the way followed by Samsudin, who preceded the other labourers. One end of a rail had been levered by Abdul Rahman to the end of a sleeper projecting from the right end of the side of the trucks, from the point of view of an imaginary observer facing the side of the trucks. Abdul Rahman then proceeded to lever the other end of the rail to the end of the sleeper projecting from the left end of the same side of the trucks. While he was doing so, the end of the rail which was resting on the end of the sleeper projecting from the right end of the side of the trucks fell over the outer side of the plaintiff's right ankle. The plaintiff fell on his right side. The other end of the rail then also fell; and the end of the rail which had fallen on the plaintiff's ankle rose a few inches and fell on the inner side of the same ankle.

Samsudin's evidence is corroborated by that of the plaintiff. The defendant has elected to call no evidence. I find no substance in the defendant's allegation that the plaintiff stood on the rails on the railway trucks and caused a rail to fall on his leg in prising the rails with a crowbar.

I find that there was no contributory negligence on the part of the plaintiff.

In my opinion there was a duty owed to the plaintiff by Abdul Rahman to take reasonable care in the work of managing or controlling the unloading of rails. The question is whether the rail fell on the plaintiff's right foot as the result of a breach of this duty on the part of Abdul Rahman. Counsel for the defendant suggested that there may have been negligence in the way the sleepers were put on the trucks. As six or seven rails had been unloaded safely before the accident, it seems to me more probable than not that the accident was not caused by the way the sleepers had been put on the trucks. If the greater part of the rails had been unloaded leaving a few to be unloaded, it would have been dangerous to lever the end of a rail to the end of a projecting sleeper as there was a risk that the weight of the rail might cause the sleeper to incline downwards and the rail to fall off.

But that stage had not yet been reached in the unloading. In my judgment, Abdul Rahman most probably pushed the right end of the rail a little too far out on the projecting end of the sleeper at the right end of the side of the trucks, so that the right end fell off when the left end of the rail was levered. To my mind, that seems to be the common-sense view of the matter. For this reason I find that the rail fell on the plaintiff's right foot as the result of Abdul Rahman's negligence. And I hold that the defendant is vicariously liable for such negligence.

I now turn to the submission of counsel for the plaintiff that the defendant was negligent in failing to provide a safe system of work. In my view, the law on this point is correctly stated in the following passage from 25 *Halsbury's* Laws of England, 3rd edition, pages 508 to 510:

> "A master is under a duty, arising out of the relationship of master and servant, to take reasonable care for the safety of his work-people in all the circumstances of the case so as not to expose them to an unnecessary risk . . . . The duty to exercise reasonable care is, however, one which is personal to the master, and if he entrusts its performance to a servant, agent or, it seems, an independent contractor, he is vicariously liable for any negligence on the part of the person so appointed in performing the duty . . . . The master's duty to take reasonable care so to carry on his operations as not to subject his servants to unnecessary risk is a single duty, applicable in all circumstances. For convenience in applying the principle in particular cases, however, the master's obligation has long been recognised as threefold in character; it is an obligation, and a continuing one, for the provision of a competent staff of men, adequate material, a proper system and effective supervision."

In my judgment, the system of unloading used on the day of the accident exposed the defendant's servants to an unnecessary risk. According to Samsudin, there were two systems of unloading used by the defendant's servants. The system used on the day in question was that used for unloading rails weighing about 480 to 500 lbs. each. The system used for unloading rails weighing about 800 lbs. each was to push them down to the ground one by one and to drag them along the ground by means of a rope and hook. It seems to me that the former system exposed the defendant's servants to the risk or injury arising from Abdul Rahman's negligence, but the latter did not. And it seems to me that, if the accident was caused without any negligence on the part of Abdul Rahman, the former system exposed the defendant's servants to the risk of injury arising from some cause other than the negligence of Abdul Rahman, but the latter did not.

One aspect of a master's duty to exercise reasonable care for the safety of his servants and not to expose them to an unnecessary risk is his duty to take reasonable care to provide and maintain in operation a reasonably safe system of work when it is necessary in the interests of safety. It is submitted by counsel for the defendant that the work of unloading rails was not intrinsically dangerous and that, therefore, it was not necessary for the defendant to prescribe a system of work. In my opinion the work of unloading 480-lb. rails was intrinsically dangerous. A 480-lb. rail could cause serious injury to a workman if it were to fall on him. In the present case the plaintiff sustained a compound fracture of his right heel-bone as the result of a rail falling on his right foot. As the work was intrinsically dangerous, the defendant, in my view, should have provided and maintained a reasonably safe system of work. And I hold that the defendant was negligent in failing to do so.

It is further submitted by counsel for the defendant that the operation of unloading was simple and could well be left to the workmen themselves. The answer to this submission is that the defendant may delegate the performance of his duty as employer to provide a reasonably safe system of work; but he cannot delegate or avoid his own responsibility for the proper performance of his personal duty. In the present case I take the view that, if the defendant delegated the performance of his duty as employer to his workmen, they did not properly perform the duty delegated to them and the defendant cannot escape liability.

I now turn to the question of damages. As regards the claim for special damages I award nothing for transport expenses as this item was not proved by the plaintiff. The plaintiff was earning between $150 and $205 a month as a labourer before the accident. Counsel for the plaintiff claims special damages for loss of earnings for a period of 36 months from the date of the accident to the date of the trial at the rate of $150 a month. Counsel for the defendant suggests that it is probable that the plaintiff would have gone to India for 6 months during the period of 36 months, if the accident had not happened. In view of this probability I award special damages for loss of earnings for 30 months at the rate of $150 a month: this amounts to $4,500. As regards general damages I award $5,000 for pain and suffering and loss of amenities on the medical evidence before me. And considering the fact that the plaintiff is 57 years old and making allowance for contingencies, I award him general damages for loss of future earnings for two years at the rate of $150 a month: this amounts to $3,600.

For the above reasons I give judgment for the plaintiff for $13,100 and costs.

Judgment for the plaintiff.

Solicitors: *David Marshall*; *Hilborne, Chung & Co.*